IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4387 OF 2005.

M/s.R.K.Industries & anr. ... Petitioners.
Versus.
M/s.Ram & Co. & anr. ... Respondents.

Shri R.D.Mishra for the Petitioners.

Shri Vijay Kanoria for the Respondent No.1.

CORAM : ABHAY S.OKA, J.

DATED : 19th June, 2007.

P.C.:

1. Heard the learned Advocate for the Petitioners and the learned Advocate for the 1st Respondent. By consent of the parties, taken up for hearing at the stage of admission. The Petitioners are the original Defendants Nos.1 and 2 and the 1st Respondent is the original Plaintiff. The prayer in the suit filed by the 1st Respondent is for possession of the suit premises, more particularly described in the plaint. By the impugned order, the Application made by the Petitioners for amendment of the Written Statement has been rejected. The amendment sought to be made in the Written Statement was for incorporation of the word "Manohar" before the words "Ramabatar Jhunjhunwala" at two places in the Written Statement. The second amendment is for correcting the year mentioned as 1979 in the second paragraph of the Written Statement to 1977.

2. The learned Advocate for the Petitioners submitted that the Court ought to have been liberal while permitting amendment of the Written Statement, especially when the proposed amendment was not inconsistent with the defence which is already raised. It is submitted that the amendment does not amount to withdrawal of admission. The learned Advocate for the 1st Respondent opposed the petition by pointing out that in the declaratory suit filed by the Petitioners, they had relied upon the same agreement and the suit has failed. He submitted that the amendment was introduced only after the recording of the evidence of the witness examined by the 1st Respondent was commenced. It is, therefore, submitted that the trial Court was justified in rejecting the prayer made for amendment.

3. I have perused the Plaint and the Written Statement. The case of the 1st Respondent in the suit is that the first Petitioner was a licensee of the 1st Respondent in respect of the suit premises under a leave and licence agreement dated 17th January 1977. According to the case of the 1st Respondent, the leave and licence agreement expired by efflux of time and therefore, the Petitioners have no right to remain in possession,

4. In paragraph 6 of the Written Statement which is originally filed, the Petitioners have stated thus:

> "6. With reference to para 1 of the plaint the Defendant Nos.1 and 2 state that the Leave and Licence Agreement dated 17th January, 1977 was terminated on 21st July, 1977 by the Plaintiff and Defendant No.1 and a new Tenancy Agreement dated 21st July, 1977 has been executed by and between the Plaintiff and Defendant No.1 in respect of the suit premises and the Plaintiff's partner Ramabhtar Jhunjhunwala had signed the said Tenancy Agreement on behalf of the Plaintiff and the Defendant No.1 herein Shri Huseini Bhai R.Vasadwala has signed the same on behalf of the Defendant No.1 herein in the office of the Plaintiff. The Defendant No.1 and 2 further state that the said Tenancy Agreement dated 21/7/1977 was prepared by the Plaintiff's said partner Shri Ramabhtar Jhunjhunwala."

By the proposed amendment, the Petitioners want to add the word "Manohar" before the words "Ramabhtar Jhunjhunwala" thereby suggesting that a new tenancy agreement was executed by the said Manohar who was

allegedly a partner of the 1st Respondent. The second amendment sought is that the date of the alleged tenancy agreement shall be read as 21-7-1979 instead of 21-7-1977. The third amendment sought is for annexing the list of documents on which reliance is placed by the Petitioners in their Written Statement. The said list consists of alleged tenancy agreement as well as a receipt for payment of rent of Rs.200/-.

5. Considering the nature of amendment, it is obvious that the same ought to have been allowed subject to payment of costs. The prejudice, if any, caused to the 1st Respondent could have been compensated by ordering payment of costs. It is stated that one Manohar Ramabhtar Jhunjhunwala has been examined as a witness by the 1st Respondent. As a consequence of the amendment being allowed, the 1st Respondent will be entitled to recall the said witness for further examination-in-chief. In the present case the costs will have to be quantified at Rs.7500/-.

6. Hence the following order is passed:

(i) The impugned Judgment and order dated 6th May 2005 passed by the trial Court is quashed and set aside. The Interim Notice No.129 of 2005 filed by the Petitioner is

made absolute, subject to condition of the Petitioners paying costs of Rs.7500/- to the 1st Respondent within a period of six weeks from today. Payment of costs will be a condition precedent.

(ii) Amendment shall be carried within a period of two weeks from the date of payment of costs.

(iii) It will be open for the 1st Respondent to recall the witnesses, if any, already examined by it in the light of the amendment carried out in the Written Statement. It will also be open for the 1st Respondent to examine any additional witness though his name may not cited in the list of witnesses.

(iv) All contentions of the parties on merits of the suit are expressly kept open.

(v) Writ petition is allowed in the above terms.

Judge.